HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P. NO.26379 OF1996

Between:
Varre Suryanarayana

.....Petitioner

AND

The Secretary to Government, Social Welfare Department,
Government of Andhra Pradesh, Secretariat, Hyderabad.
and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Petitioner : Sri G.Dharma Rao

Counsel for Respondent No.1 : The Government Pleader for Social Welfare

Counsel for Respondent No. 2 & 3: Government Pleader for Revenue

Dated 21/6/2006

Truth and non-violence are two basic values of life which have been cherished by Indian society for many centuries. Truth was the hallmark of all proceedings in the judicial system. Till the advent of British Raj, people used to feel proud in telling truth before the Court totally unconcerned with the result of the case. However, with the establishment of the judicial system, which was controlled by foreign government, the truth started becoming a casualty. In the post independence era, we have seen that the proceedings of the Court are marred by falsehood. The materialism has overtaken all the basic values of life including the truth and a new creed of litigants has come into existence, who do not have any respect for truth. The members of this class can go to any extent to mislead the Court by suppressing facts or making false statement or the like. In order to meet this challenge and to protect the system based on Rule of Law, the Courts have evolved new rules, strategies and techniques. One of the mechanisms evolved by the Courts to protect the proceedings from unscrupulous elements is that the person seeking intervention of the Court will not be heard if he is found guilty of contumacious conduct viz., suppression or misstatement of fact, making of false statement, withholding of documents etc. In my considered view, the time has come when the Court must firmly refuse to hear a litigant who does not approach with clean hands or who makes an attempt to touch the pure foundation of justice with tainted hands. This approach will be consistent and in tune with a series of judgments rendered by the Supreme Court and different High Courts.

In **Hari Narain v. Badri Das**[1], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are

inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.,**[2] the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], the Supreme Court held that where a preliminary decree was

obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[5], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

In **Harbhajan Kaur v. State of Punjab and others**[6], a Division Bench of Punjab and Haryana High Court held as under:

> "The writ petitioners have tried to overreach the Court. They did not bring the correct facts to the notice of the Court and obtained an order from us by concealing material facts and without impleading vitally affected party to the writ petition. They have been fighting litigation against the Punjab Wakf Board since 1986 as is passed in Petition No.363 of 1986 (Sham Singh and another v. Punjab Wakf Board). They did not disclose that their applications for transfer of land were dismissed by the Tehsildar (Sales) and, on appeal the orders were affirmed by the Sales Commissioner and that the appeals against the orders of the Sales Commissioner were pending before the Chief Sales Commissioner, that the Punjab Wakf Board had been contesting their claim and in those proceedings it had been held that the Punjab Wakf Board was the owner of the disputed land and that in judicial proceedings Smt.Kuldip Kaur and her husband had made admission that the Punjab Wakf Board was the owner of the disputed land."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**[7], Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following

words:

> "On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

> "It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law …
> … The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

In **R v. Churchwardens of All Saints Wigan**[8], Lord Haterlay observed:

> "Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it – matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**[9], it was held:

> "Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

I have made a mention of the above stated legal position because after hearing learned counsel for the parties and perusing the record, I am convinced that the writ petition filed by the petitioner for quashing proceedings dated 29-10-1996 issued by Mandal Revenue Officer, Gangavaram (respondent No.2) is liable to be dismissed only on the ground that the petitioner has not approached the Court with clean hands.

The petitioner claims to be a Member of Kondakapu Community which is a Scheduled Tribe. His grandfather is said to have purchased Acs.4-38 cents land comprised in Survey No.135 situated in Pidathamamidi Village from a non-tribal in

the year 1943 in the name of his wife. In 1951, the land is said to have been gifted to the petitioner and since then, he and his father are in possession. According to the petitioner, Sri Annika Surayya and Smt. Annika Magamma filed L.T.R.P No.36 of 1995 before Deputy Collector, Tribal Welfare, East Godavari District for cancellation of the transaction of sale on the ground that there is a statutory prohibition against transfer of land of a tribal to a non-tribal. On receipt of notice of the application, the petitioner approached respondent No.2 for issue of social status certificate. After sometime, he filed Writ Petition No.15760 of 1995 with the complaint that respondent No.2 has failed to issue social status certificate in his favour. The same was disposed of by the learned Single Judge on 20-07-1995 with a direction to respondent No.2 to hold enquiry and dispose of the petitioner's application within four weeks. The relevant extracts of order of the learned Single Judge are reproduced below:

> "Heard the learned Government Pleader. As the application before the Mandal Revenue Officer seeking for issuance of social status certificate of the petitioner, is pending, I do not propose to consider the request of the petitioner in this writ petition. However, it will be appropriate that there should be a direction to the Mandal Revenue Officer to take into consideration the relevant documents that may be filed by the petitioner including the judgment of this court mentioned above and the certificate obtained by the petitioner's son referred to above and dispose of the same within a period of 4 weeks from the date of receipt of this order.
>
> Respondent No.3 shall proceed with the enquiry in all other respects and receive all other evidence except the evidence of the petitioner. The petitioner is permitted to let in evidence his side after 1st September, 1995 to which date, respondent No.3 will adjourn the case after completion of other evidence. Consequently, Respondent No.3 shall not close the matter before 1st September without giving opportunity to the petitioner as stated above W.P is disposed of accordingly."

In compliance of the aforementioned direction, respondent No.2 issued proceedings dated 29-10-1996 vide which he declined to issue caste certificate to

the petitioner showing him as a member of Kondakapu Community.

The petitioner has questioned the legality of proceedings dated 29-10-1996 mainly on the ground that while refusing to issue caste certificate in his favour, respondent No.2 completely ignored order dated 03-02-1992 passed by the High Court in Writ Petition No.10870 of 1992, **Varre Appa Rao Vs. the Secretary to the Government, Tribal Welfare Department and others**.

In the counter affidavit filed on behalf of the respondents, it has been averred that the petitioner's application for issue of caste certificate was rejected by respondent No.2 after considering the relevant factors. In paragraph 5 of the affidavit filed by Sri N. Krishna, Special Deputy Collector (FAC), R.Chodavaram-cum-District Revenue Officer, East Godavari District, Kakinada, it has been averred that all family members of the petitioner including his brother are married to the members of Kapu Community. It has been further averred that on an earlier occasion, District Collector, East Godavari vide his proceedings dated 05-11-1989 declared that the petitioner's family members do not belong to Kondakapu Community. Still further it has been further averred that vide his proceedings dated 05-11-1989, the District Collector cancelled the caste certificate of one of the petitioner's brother viz., V.Satyanarayana on the ground that he is not a Kondakapu.

Sri G. Dharma Rao, learned counsel for the petitioner strongly relied on order dated 03-02-1992 passed by the learned Single Judge in Writ Petition No.10870 of 1988 and argued that in view of categorical finding recorded in that case that the petitioner and his family members belong to Kondakapu Community which is a Scheduled Tribe, respondent No.2 committed a grave illegality by refusing to recognise him as a member of Kondakapu Community. Learned counsel emphasised that Varre Appa Rao who filed Writ Petition No. 10870 of 1988 and petitioner Varre Suryanarayana are cousin brothers and argued that the finding recorded in the writ petition filed by Varre Appa Rao should be treated as binding on all public authorities and refusal of respondent No.2 to issue certificate showing the

petitioner as a member of Kondakapu Community should be declared as illegal. Sri Dharma Rao then argued that the impugned proceedings should be quashed because while declining the petitioner's prayer, respondent No.2 ignored the direction given by the learned Single Judge in Writ Petition No.15760 of 1995 to consider the entire evidence produced by his client.

Learned Government Pleader supported the proceedings under challenge and argued that the writ petition is liable to be dismissed solely on the ground that the petitioner has not questioned the legality of proceedings dated 05-11-1989 issued by District Collector, East Godavari, Kakinada. He pointed out that the District Collector had declared as many as seven members of the petitioner's family including the petitioner as not belonging to Kondakapu Community and argued that without getting the said proceedings annulled, the petitioner cannot seek invalidation of the impugned proceedings.

I have thoughtfully considered the respective arguments and carefully perused the record. For the sake of reference, the relevant portions of the proceedings dated 29-10-1996 issued by respondent No.2 are reproduced below:

> "Enquiry was conducted as per the orders of the High Court in W.P.15760/95, dtd.20-7-95. In the course of enquiry, some of the villagers of Pidathamamidi village said that you do not belong to Kondakapu community. In an earlier occasion the District Collector, East Godavari, Kakinada vide his proceedings Ref.B2/13399/89 dated 5-11-89 declared that the following members of your family do not belong to Kondakapu community and you belong to Kapu community.
>
> 1. Varre Satyanarayana, S/o. Appayaynaidu, Pidathamamidi, Gangavaram Mandalam
>
> 2. Varre Venkatarama Jagannadharao.
> 3. Varre Appa Rao
> 4. Varre Sithapathi Rao
> 5. Varre Janakiram
> 6. Varre Venkata Narasimham
> 7. Varre Chitti babu.

> As per your statement all your family members married the people of Kapu community. Your brothers also married the members of the Kapu Community. Your family members are having relationship with the members of non-tribal community. Therefore it is not possible for me to issue caste certificate in your favour that you belong to Konda kapu community."

A cursory reading of the above reproduced proceedings makes it clear that in the course of enquiry held by respondent No.2, the petitioner himself admitted that all his family members are married to the people of Kapu Community and they are having relations with members of non-tribal community. The villagers of Pidathamamidi Village also gave out that the petitioner does not belong to Kondakapu Community. Not only this, on an earlier occasion, the District Collector vide his proceedings dated 05-11-1989 declared that seven members of the petitioner's family do not belong to Kondakapu Community and belong to Kapu Community. For the reasons best known to him, the petitioner has neither produced copy of proceedings dated 05-11-1989 issued by the District Collector nor he has made a prayer for quashing the same despite the fact that finding recorded in those proceedings have direct bearing on his claim for being declared as Member of Kondakapu Community. In my view, it can reasonably be presumed that the petitioner has done so with a view to keep the Court in dark about the contents of those proceedings. The petitioner must be aware of the fact that the findings and conclusions recorded by the District Magistrate are adverse to the prayer made in this petition and production thereof may be fatal to his cause. This leads to an irresistible inference that the petitioner is guilty of highly contumacious conduct and he is liable to be non-suited on that count.

The decision rendered by the learned Single Judge in Writ Petition No.10870 of 1988 cannot be made basis for granting relief to the petitioner because except making a bald assertion that Sri Varre Appa Rao is related to him, the petitioner has not produced any evidence on the record of this petition to show that he and Varre Appa Rao belong to the same community and their families are intrinsically related to each other. In any case, without successfully challenging proceedings dated 05-

11-1989 issued by the District Collector, the petitioner cannot seek a direction for quashing proceedings dated 29-10-1996.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, interim order passed in WPMP No.32567 of 1996 stands automatically vacated.

G.S.SINGHVI, CJ

21-06-2006

msv/ks

Note: The Court Officer is directed to give an attested copy of this order to the Government Pleader who should immediately sent it to District Collector, East Godavari District at Kakinada and Mandal Revenue Officer, Gangavaram, East Godavari so as to enable them to take necessary follow up action.

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[1] AIR 1963 SC 1558

[2] AIR 1983 SC 1015

[3] AIR 1991 SC 1726

[4] JT 1993 (6) SC 331

[5] AIR 1960 J & K 19

[6] 1994 P.L.J. 287

[7] 1917 (1) KB 486

[8] (1876) 1 A.C. 611,

[9] (1870) 39 L.R. Q.B. 269